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MATTERS RELATING TO COMMITMENTS

CRITERIA FOR JOINT IMPLEMENTATION

Note by the interim secretariat

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I. INTRODUCTION

A. Committee mandate

1. At its eighth session, the Committee had a first discussion on its task A.2, "criteria for joint implementation" (A/AC.237/24, para. 44). This discussion took place in the light of the note by the interim secretariat on this issue (A/AC.237/35). The Committee, with a view to preparing the decisions to be taken by the Conference of the Parties at its first session (COP 1), requested the interim secretariat to undertake the following tasks (A/AC.237/41, paras. 50-51):

(a) To provide further documentation on the issue of criteria for joint implementation, including a list of possible criteria, taking into account all the views expressed and submissions made during the eighth session, and any further comments which member States may have transmitted to the interim secretariat before 30 September 1993;

(b) To issue, upon request by the submitting country or organization and in the original language only, such documents that have been transmitted to the interim secretariat. (These submissions have been consolidated in documents A/AC.237/Misc.33 and Add.1 and made available to all delegations.)

B. Convention provisions

2. The Convention envisages that "efforts to address climate change may be carried out cooperatively by interested Parties" (Article 3.3). More explicitly, joint implementation is provided for in Article 4.2, which contains commitments specific to developed country Parties and other Parties included in Annex I (in this note, hereafter referred to as "Annex I Parties"):

- Article 4.2(a) reads in part: "Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. ... These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph" (emphasis added). In this context, the Convention notes that policies and measures adopted by regional economic integration organizations are equivalent to those taken nationally (see footnote to Article 4.2(a)).

- Further, Article 4.2(b) mentions "the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions ..." (emphasis added).

- Article 4.2(d) provides that COP 1 "shall ... take decisions regarding criteria for joint implementation as indicated in [Article 4.2(a)]."

C. Scope of the note

3. This note is intended to facilitate the continuation of discussions regarding criteria for joint implementation activities. It revisits the concept of joint implementation in the light of discussions at the eighth session of the Committee, based on the note by the interim secretariat (see A/AC.237/35), and of submissions subsequently transmitted to the interim secretariat by

States (see A/AC.237/Misc.33 and Add.1). The note sets out, as requested, a list of possible criteria for joint implementation for consideration by the Committee. These possible criteria seek to reflect the different stages of consensus emerging from the views expressed by States at the eighth session and in subsequent submissions. They attempt to capture those general themes on which a convergence of views could be perceived and also those on which a consensus might possibly be developing. The note does not, however, look at specific criteria and guidelines since they would be most usefully developed, on the basis of guidance by the Committee, pursuant to a discussion on general criteria. Finally, the note mentions the possibility of adopting a phased approach to developing the concept of joint implementation, which might include an experimental phase to build experience.

D. Possible action by the Committee

4. The Committee may consider the criteria put forward in this note with a view to making recommendations on them, recognizing that final decisions on criteria for joint implementation will rest with the COP. Inasmuch as any concerns are not met by the proposed criteria, the Committee is invited to consider how, building upon consensus reached thus far, further criteria could be developed to address such concerns.

5. On the basis of its deliberations and any conclusions reached, the Committee may wish to ask the interim secretariat to provide further documentation, such as a refined and extended list of possible criteria and guidelines for the practical aspects of joint implementation, for consideration at the tenth session.

II. POSSIBLE CRITERIA FOR JOINT IMPLEMENTATION

A. General considerations

6. A criterion is defined as "a principle or a standard a thing is judged by".* In developing possible criteria for joint implementation, the interim secretariat has endeavoured to capture key points of principle. The basis for this exercise, apart from the provisions of the Convention, is to be found in the interventions by, and submissions from, States. Submissions were received from 21 States, as well as from three non-governmental organizations. The interim secretariat has had to exercise its judgement in deriving possible criteria from these submissions. As noted in the conclusions of the Committee at its eighth session, joint implementation is a complex issue with far-reaching political implications. Nonetheless, the debate and the submissions indicate that a convergence of views seems to be emerging on many aspects. In view of the complexity of the issue, the Committee may wish to take a step-by-step approach when addressing the issue. Consensus on some key principles could be taken as the starting point and serve as the basis for addressing remaining concerns.

7. In order to move joint implementation beyond the conceptual stage, it is not only necessary to establish criteria, but also to develop guidelines for the more operational aspects. It will also be necessary, in due course, to consider the requisite institutional arrangements. Although the submissions provided many relevant suggestions on the operational and institutional

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* See Concise Oxford English Dictionary, Eighth Edition, 1990.

aspects, these are not addressed in this note but are left for a later stage. Conclusions on criteria and guidelines for joint implementation might also be relevant to considerations on guidelines for first communications (A/AC.237/45), the roles of the subsidiary bodies established by the Convention (A/AC.237/46), methodological issues (A/AC.237/44) and the review of the adequacy of commitments in Article 4.2(a) and (b) (A/AC.237/47). Cross references could be taken up as appropriate.

8. Throughout this note it is assumed that any criteria for joint implementation would apply to actions under both Article 4.2(a) and Article 4.2(b). In cases where emissions limitations are mentioned, this should be taken to refer also to policies and measures to protect and enhance greenhouse gas sinks and reservoirs, with equivalent results, except where the context makes clear that the distinction should be made.

B. Criteria

9. In response to the request by the Committee, the interim secretariat presents the following list of possible criteria for consideration and further refinement.

10. **Possible criterion 1:**

Joint implementation refers only to joint action to implement policies and measures, and in no way modifies the commitments of each Party.

Comment

11. Joint implementation refers to policies and measures implemented jointly by an Annex I Party with another Party (or other Parties). Such policies and measures are here referred to as "activities". If a Party enters into any sort of joint implementation agreement, either as an "investor" or as the "host" to an activity, this would not modify its commitments. There would be no transfer of commitments from the Party acting as investor to the Party acting as host.

12. **Possible criterion 2:**

Joint implementation is distinct from the provision of assistance to other Parties.

Comment

13. Any joint implementation activity would be separate from, and in addition to, the provision of assistance to other Parties. This would mean, for example, that the commitments of Annex II Parties with regard to the financial mechanism or to the provision of technical assistance to other Parties, as provided for in Articles 4.3, 4.4 and 4.5, would remain untouched by joint implementation.

14. Joint implementation would widen the scope of financial options for Parties. While it could be envisaged that several options would be open to the host Party for certain activities, this Party might prefer joint implementation if this were to provide better (financial) conditions than other sources.

15. **Possible criterion 3:**

Joint implementation is a voluntary activity under the responsibility of two or more Parties; such activity must be undertaken or accepted by the Governments concerned.

Comment

16. In order for an activity to be classified as joint implementation under the Convention, it would have to be accepted as such, on a voluntary basis, by the Parties involved in the undertaking of an activity. Joint implementation activities could be undertaken by Governments or by the private sector. In the latter case, which may be the more frequent, the activity would have to be accepted by the respective Governments. International cooperation to reduce emissions that is not explicitly accepted by the Parties involved would not be considered joint implementation as such.

17. **Possible criterion 4:**

Joint implementation would be undertaken in conjunction with domestic action.

Comment

18. There seems to be agreement that, for various reasons, Annex I Parties should undertake a fair number of activities domestically, including technology development. Furthermore, it is generally understood that, for the present decade, joint implementation could play only a modest role in limiting emissions. This apparent convergence of views may, however, be based on differing perspectives. It may derive from the intention of some countries to achieve the aim with regard to the "benchmark" emission levels indicated in Article 4.2(b) through national actions alone, joint implementation activities being additional to such actions. However, countries that envisage the inclusion of "credits" from joint implementation in their calculated emissions levels nevertheless face practical constraints, such as the time needed for preparing and implementing joint implementation activities. This would preclude large "credits" in the current decade through such activities.

19. The Committee may wish to consider whether it wishes to recommend guidelines for Parties to the COP on any quantitative balance between domestic actions and those involving joint implementation. The Committee is reminded that any differences of interpretation on the nature or on the exact content of the national commitments might possibly be best addressed in its review of the adequacy of the commitments in Article 4.2(a) and (b) (see A/AC.237/47).

20. **Possible criterion 5:**

Joint implementation should be beneficial to all Parties involved, and be consistent with their national priorities for sustainable development.

Comment

21. Joint implementation may involve different degrees of partnerships. One example could be that of Parties with close economic ties that want to address jointly certain sectors, for example, the emissions associated with the electricity that is exchanged between these countries. Another possibility, which is perhaps more likely, is that of cooperation whereby one Party would

provide the finances (the "investor") and the other would provide opportunity for cost-effective emissions reduction (the "host").

22. The concept of joint implementation has evolved out of considerations of cost-effectiveness, a principle accepted by the Convention (Article 3.3). It might be appropriate to take a broader view of this concept, consistent with the other principles of the Convention, in which activities should also lead to net benefits for the environment and for sustainable development.

23. The principal concerns expressed with regard to joint implementation are that it might divert an investing Party from taking national action and/or might run counter to the longer-term interests of the host Party. Some of these concerns are outlined in the following paragraphs.

24. Specific concerns with regard to the investing Party include the following:

(a) Joint implementation could be seen as a pretext for delaying national action and as possibly inconsistent with the "polluter pays principle";

(b) "Modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention" (Article 4.2(a)) necessitates research, development, demonstration and implementation of new technologies. Policies and activities to this end may be delayed if cheap alternatives are accessible through joint implementation. Similar concern regarding possible delays has been mentioned with respect to actions that are cost-effective and environmentally benign but for which the political will to implement them is currently insufficient;

(c) Cost estimates for possible actions in the investing countries may not reflect the real net costs, since they often do not include the full range of benefits for society. This would mean that such cost estimates would not be a suitable reference for actions in other countries.

25. Specific concerns expressed with respect to the host Party include the following:

(a) Joint implementation may not coincide with national priorities;

(b) Joint implementation may not be in the longer-term interests of host countries; those activities involving land use, such as (re)forestation, are frequently mentioned in this respect (for example, forests might need to be kept intact indefinitely for storing carbon, thereby blocking their use for agricultural or other uses);

(c) Joint implementation could be expected to focus first on the more cost-effective options, thereby increasing the average costs of future activities in the host country;

(d) The host Party might be in a weak position to negotiate a fair arrangement (for example, owing to lack of information on available technologies).

26. The criteria advanced in this note might be able to meet most of these concerns. Other concerns might be met by appropriate arrangements. For example, with respect to lack of information, Article 12.7 of the Convention could be noted. The host Party may also wish to make use of available sources of information to provide useful background; in this context, the Climex project that is being developed could be of use (A/AC.237/51).

27. **Possible criterion 6:**

Joint implementation activities should bring about real and measurable results, determined against reasonable baselines.

Comment

28. The information currently available on methodologies for projecting emissions (see A/AC.237/44) strongly suggests that any projections or scenarios of emissions at the national level would be imprecise and uncertain. Although such projections or scenarios would serve as useful background information for joint implementation activities, they would not provide a suitable basis for the calculation of emissions reductions associated with any specific activities. Each activity would have to be judged on its own merits, and for each activity an appropriate baseline would be needed. Such baselines would have to take into account all relevant factors, for example, including the effects over the full fuel life cycle of a project. They would also have to address such secondary effects as "carbon leakage", that is, an induced shift of activities to other places, counteracting the intended emissions reduction. Baselines would have to be reasonable, their assumptions being based on considerations of sustainable development, including effective environmental standards and sound economic policies.

29. The limitations on the use of a national baseline would be particularly relevant to Parties undergoing a recession, or with economies in transition. For many, if not all, of the latter Parties, the process of transition to a market economy seems to result in a period of decrease in the level of economic output, especially for heavy industry. In such cases, it can be expected that as a consequence national emissions will decrease significantly over the present decade. However, the extent of such decreases is very difficult to predict. It may be self-evident that such a decrease of emissions at the national level could not be simply "shared" with another Party which might face an increase in its emissions. Any joint implementation activity between Parties would have to refer to well-defined, concrete activities that would lead to real, "robust" limitations that are in addition to any reductions expected from the general changes in the economy.

30. The requirement that joint implementation should bring about real and measurable results resulting from well-defined activities, would be equally applicable to all Parties, and would have to be verified by comparable methodologies. Double counting of emissions limitations has to be avoided and therefore appropriate procedures for communicating results need to be established.

31. **Possible criterion 7:**

The impacts of joint implementation activities would have to be assessed with respect to their economic and social, as well as environmental, effects.

Comment

32. Impact assessments would have to look at direct as well as indirect effects. The full cycle of processes involved in an activity would have to be considered with the aim of ensuring that it does not merely result in the displacement of emissions from one activity to another or from a Party where an activity will take place to another country (whether Party or non-Party).

33. **Possible criterion 8:**

Joint implementation activities should, where appropriate, be accompanied by measures to ensure their long-term environmental benefits.

Comment

34. Another concern is how to ensure that an activity will perform as projected. This involves not only the determination of actual results but also contingency planning. In all Parties there is the possibility that projects may fail sooner or later. However, it will possibly be the less mature and less stable economies that offer the best prospects for cost-effective action, but where the risk of failure may also be higher. Furthermore, the systems for the determination of environmental performance may not be fully developed under such conditions. Therefore, any accounting of benefits might have to reflect a certain safety margin. In addition, it may be necessary to consider some formal insurance against failure or to make other provisions to safeguard results. The most basic "insurance policy" would, however, be to select projects that are clearly of interest to the host country.

35. **Possible criterion 9:**

Joint implementation activities could address any greenhouse gas or any combination of gases.

Comment

36. Since Article 4.2(a) and (b) refers to "carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol", joint implementation should be applicable to any of these gases. It would, however, be important to ensure transparency and accordance with agreed methodologies. "Transparency" would imply that results would have to be clearly identified with respect to individual gases and their sources. Calculations of results would have to be based on methodologies for all gases and, where appropriate, for applying the concept of global warming potentials. These methodologies are at different stages of development (see A/AC.237/44 and Add.1).

37. **Possible criterion 10:**

Parties should give priority to joint implementation activities resulting in emissions limitations.

Comment

38. Concern has been expressed about the compatibility with national priorities of actions on reservoirs and sinks. Joint implementation activities resulting in emissions limitations (which would include reductions) have not given rise to comparable concern and seem to be generally endorsed. Although the concern regarding reservoirs and sinks would be covered by proposed criteria 4 and 5 above, the conclusion might be that joint implementation activities regarding reservoirs and sinks should not be given priority. In addition, it would be necessary also for joint implementation activities regarding reservoirs and sinks to be accompanied by adequate methodologies to assess their results; however, these methodologies are not yet fully developed.

39. **Possible criterion 11:**

The benefits of joint implementation activities may be shared between the Parties involved.

Comment

40. There has been considerable discussion on how the efforts of partners in joint implementation activities would receive recognition under the Convention. There is less convergence of views on this issue than on several other possible criteria in the list. The purpose of including this possible criterion in the list is therefore not so much to signal emerging consensus, as to provide a possible starting point for discussion on this complex issue.

41. The issue of receiving recognition, which is also referred to as "crediting" or "attributing", would be most relevant in the context of quantified national emissions limitation targets. It can also be envisaged that Parties might want to obtain recognition in other ways, for example, by referring "credits" to benchmark levels (see possible criterion 4 above) or by comparing them to national emissions or national emissions reductions. There have also been suggestions to adopt a phased approach towards joint implementation, whereby initially the issue of receiving recognition would be left aside. In a later phase, possibly in the context of discussions on the evolution of the Convention, this issue could be taken up in a more focused way, taking into account the initial experience (see section III below).

42. If the Committee decides to discuss issues related to recognition, one issue would be how emissions limitations might be shared between investing and host Parties (for example, recommending a specific sharing of the emissions limitations, such as 50-50 or a range within which Parties could select appropriate shares, or leaving the choice to the Parties concerned).

43. If "credits" for emissions were to be shared, the investor would generate further reductions beyond its own share of the "credits". On the other hand, sharing would affect the cost-effectiveness for the investor, thereby reducing the potential for joint implementation activities.

44. **Possible criterion 12:**

Each of the Parties involved in a joint implementation activity would have to communicate relevant information thereon to the COP.

Comment

45. In order to verify the fulfilment of the criteria set by the COP, it would be necessary for Parties to report on their joint implementation activities. Guidelines on reporting can be developed after conclusions have been reached on criteria.

III. BUILDING EXPERIENCE

46. Many submissions point to the particular relevance of joint implementation for the period after 2000 and its role in implementing future, possibly more stringent, commitments under the Convention. Likewise, it might be expected that, in view of the complexities surrounding the

issue and time needed to develop and implement activities, joint implementation could only be able to make a modest contribution to the limitation of global emissions in the first years after the entry into force of the Convention. Joint implementation might thus be expected to show its full potential in the context of the future evolution of the provisions of the Convention.

47. This has led to suggestions for taking a phased approach to developing the concept of joint implementation under the Convention. Such phasing could take different forms. It could, for example, start with an experimental phase for the period until the COP has established definitive criteria. In this period, experimental activities could take place to build a broad foundation of experience, on the basis of initial guidance by the Committee and possibly later by the COP, and without prejudice to the criteria to be adopted by the COP. The provision of full information to the Committee and later to the COP on such experimental activities would be essential. Such information would refer, inter alia, to emissions limitations, but the issue of sharing recognition for such limitations might be left aside until criteria have been established.

48. The Committee may consider whether it sees merit in a phased approach, and if so, whether, for the period until the COP has established definitive criteria for joint implementation, it could endorse experimental activities between Annex I Parties and between Annex I Parties and other Parties.